

Weingarten

For those new to the labor relations field (and as a reminder for those more experienced Labor Relations Specialists), Title 5 United States Code (USC) section 7114(a)(2)(B), Representation rights and duties, provides that:

- (2) An exclusive representative of an appropriate unit in an agency shall be given the opportunity to be represented at -
- (B) any examination of an employee in the unit by a representative of the agency in connection with an investigation if -
 - (i) the employee reasonably believes that the examination may result in disciplinary action against the employee; and
 - (ii) the employee requests representation.

This right is commonly referred to as the "Weingarten" right, based on the U.S. Supreme Court's private sector labor decision in, *NLRB v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

Briefly, this statutory right provides that when an agency representative questions a bargaining unit employee, and the employee reasonably believes the questioning may result in disciplinary action against that employee and the employee requests union representation, the employee is generally entitled to representation if the investigation continues.

Upon a valid request for union representation from the employee, management has three options:

- 1) grant the request and notify the union that a meeting to examine a bargaining unit employee is going to take place and that the employee has requested union representation;
- 2) continue the investigation without interviewing the employee; or
- 3) offer the employee a clear choice to either continue the interview without representation, or have no interview.

Additional information regarding "Weingarten" rights can be obtained in PERMISS at <http://www.cpol.army.mil/permiss/4122.html>

In addition to affording employees these "Weingarten" rights, the Statute, at 5 USC section 7114(a)(3), requires each agency to "annually inform its employees of their rights under paragraph (2)(B) of this subsection." That is, each year, management must notify bargaining unit members of their statutory "Weingarten" rights. Typically, this is accomplished around the beginning of the new year.

Assuming you completed your annual notice last year, you'll probably just want to follow the same procedures. If your installation has a new labor relations specialist and no one is aware of the procedures followed last year, here are some suggestions for accomplishing the annual notice:

- 1) Prepare a desk drop for all unit employees, quoting the Federal Service Labor-management Relations Statute, section 7114(a)(2)(B),
- 2) Put a notice in the post newspaper,
- 3) Distribute the notice via e-mail to all unit employees,
- 4) Post the notice on all organizational bulletin boards, etc.

The bottom line is that your installation should employ the method that best ensures the widest distribution of the annual "Weingarten" notice to all bargaining unit employees. Of course, you should always check your collective bargaining agreement to see if it prescribes the procedures to be used for this notification.

If your installation does not have a set procedure for distributing the "Weingarten" notice, you may want to consider having your partnership council discuss this matter.

Keep in mind that the "Weingarten" notice is not like a Miranda warning --management is not obligated to notify unit employees of their right to representation at the time an employee is questioned. Rather, the Statute requires only that we notify our bargaining unit employees once a year regarding this right. You should note, however, that the Federal Labor Relations Authority has found union proposals negotiable that require management to notify an employee of his or her "Weingarten" right whenever an agency representative questions the employee. Should the union raise this type of proposal during your discussions regarding the annual notification, we recommend that you generally not agree to it. Of course, since labor relations is a command program, activities are free to agree to this type of language if your command believes it is in its best interest to do so.

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